

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUDITH A. JACKSON
Claimant

VS.

THE BOEING COMPANY
Respondent

AND

AETNA CASUALTY & SURETY COMPANY
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

[illegible]

Docket No. 176,169

ORDER

On May 6, 1997, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge John D. Clark on December 6, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Robert R. Lee appearing for Steven R. Wilson of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, E. L. Lee Kinch of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board. The parties further stipulate that the depositions of Dr. Kenneth Zimmerman and Dr. George Lucas listed in the submission letter of the respondent but not contained in the Court's record were never taken and were erroneously listed by the respondent. As such, the concern reflected by the Administrative Law Judge in his paragraph number 3 of the Award is resolved.

ISSUES

What, if any, is the nature and extent of claimant's injury and/or disability? Respondent goes on to list issues of whether this is a scheduled injury or a general body impairment and whether claimant is entitled to a work disability. Both would be considered part of the nature and extent of claimant's injury and/or disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, including the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. With the exception of the discussion regarding claimant's loss of ability to earn a comparable wage, the findings and conclusions enumerated in the award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

The Administrative Law Judge found claimant's injury to encompass a whole body impairment and awarded benefits for same. The Appeals Board concurs with that finding. The Administrative Law Judge, in considering what work disability should be attributable to claimant's injury, discussed the opinions of Karen Terrill and Jerry Hardin. Ms. Terrill felt that claimant had the ability to earn \$384.62 per week which, when compared to the average weekly wage of \$507.98, resulted in a 24 percent reduction in her ability to earn comparable wages. Mr. Hardin felt claimant was capable of earning \$325 per week after the injury which, if compared to the average weekly wage of \$507.98, would result in a 36 percent loss of ability to earn comparable wages. The Administrative Law Judge adopted the opinion of Ms. Terrill but did not utilize the opinion of Mr. Hardin who used a preinjury wage of \$384.62 which is different than that utilized by the Administrative Law Judge in the Award. The Appeals Board, in considering the opinion of Mr. Hardin, finds no justifiable reason for rejecting same. When the opinions of both Mr. Hardin and Ms. Terrill are considered, the claimant's loss of ability to earn comparable wages is 30 percent. The

24 percent loss of access to the open labor market found by the Administrative Law Judge is supported by the evidence in the record and the Appeals Board adopts same as its own.

K.S.A. 1991 Supp. 44-510e(a) requires both the employee's ability to perform work in the open labor market and to earn comparable wages be considered when computing claimant's entitlement to a general body disability. The Appeals Board finds no legitimate reason for placing greater emphasis upon one prong of the equation over the other and, therefore, finds claimant entitled to a 27 percent permanent partial disability to the body as a whole as a result of the injuries suffered from June 1990 through June 15, 1992, while working for respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated December 6, 1996, should be, and is hereby, modified and an award is hereby made in favor of the claimant, Judith A. Jackson, against the respondent, The Boeing Company, and its insurance carrier, Aetna Casualty & Surety Company, and the Kansas Workers Compensation Fund for an accidental injury sustained on June 16, 1992.

Claimant is entitled to 76 weeks temporary total disability compensation at the rate of \$289 per week in the amount of \$21,964 followed by 339 weeks permanent partial disability compensation at the rate of \$91.44 per week totaling \$30,998.16 for a total award of \$52,962.16. As of June 10, 1997, there would be due and owing to claimant 76 weeks temporary total disability compensation at the rate of \$289 per week in the sum of \$21,964 followed thereafter by 184 weeks permanent partial disability compensation at the rate of \$91.44 per week in the amount of \$16,824.96 for a total due and owing of \$38,788.96 which is ordered paid in one lump sum minus amounts previously paid. Thereafter the remaining balance in the amount of \$14,173.20 is to be paid at the rate of \$91.44 per week for 155 weeks until fully paid or until further order of the Director.

The fees necessary to defray the expense of the administration of the Kansas Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Barber & Associates	
Transcript of motion hearing	\$131.65
Transcript of preliminary hearing	89.20
Transcript of preliminary hearing	76.40
Transcript of preliminary hearing	81.30
Transcript of preliminary hearing	83.55
Deposition Services	
Transcript of motion hearing	\$132.50

Transcript of regular hearing	228.70
Deposition of Karen Crist Terrill	149.20
Deposition of Steven B. Jenkins, D.O.	222.40
Deposition of James Joseph, M.D.	121.00
Bannon & Associates	
Deposition of Ernest R. Schlachter, M.D.	\$166.90
Alexander Reporting Company	
Deposition of Jerry D. Hardin	\$274.50

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Frederick L. Haag, Wichita, KS
E. L. Lee Kinch, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director